



Testimony on the Legalization of Cannabis for Adult Recreational Use:

Budget Article 11

House Committee on Finance

April 29, 2021

The Economic Progress Institute believes that **the legalization of cannabis, if enacted, must be accompanied by strong provisions to advance racial equity**, as an appropriate response to decades of inequitable policies and practices undertaken through the war on drugs. Although Budget Article 11 provides some equity measures, it does not go far enough. We also suggest that **alternative taxation mechanisms** be considered, in order to provide a more stable source of revenue to fund programs advancing racial equity.

Historical Background

The very term “marihuana” was adopted in place of the technical word “cannabis” in order to associate Mexican and other Latinx Americans with this supposedly dangerous drug.¹ This is why we and many others use the term *cannabis* instead of marijuana or marihuana (the latter of which still appears in Rhode Island statute in at least three places).

Black and Latinx Americans have been disproportionately harmed by the decades-long war on drugs. In the 1920s and 1930s, Black and Mexican Americans were stereotyped and demonized by the likes of Harry Anslinger, the commissioner of the Federal Bureau of Narcotics under the Treasury Department from the Hoover through the Kennedy administrations. Anslinger characterized Spanish-speaking Americans as “degenerate” and jazz music, associated with Black Americans, as “satanic” and as something connected with cannabis usage. Madness and all sorts of violent crime, including rape and murder, were attributed to cannabis.²

Despite well-documented similarities in drug use across racial and ethnic groups, arrest and conviction rates have long been disproportionately high for Blacks. In 2010, Black Rhode Islanders were 2.59 times as likely as White Rhode Islanders to be arrested for marijuana possession. While the total number of such arrests declined drastically after decriminalization in 2012, still in 2018 Black Rhode Islanders were 3.32 times as likely as White Rhode Islanders to be arrested.³ All told, nationwide there continue to be hundreds of thousands of arrests annually for marijuana possession.⁴

Even after Rhode Island’s decriminalization of the possession of under one ounce of cannabis, limited data strongly suggest that the issuance of citations retains a discriminatory effect. In 2017, University of Rhode Island Professor Peter Phipps and his students filed public record requests with 26 police departments in the state. While only a half-dozen collected and provided citation data with breakouts by race, the cases of Johnston and Newport demonstrate significant disparities. While Johnston is 90% White, from 2012-2017, the police department catalogued arrests and citations for 106 African Americans, 98 Whites, and 32 Hispanics. African Americans account for about 8% of the population of Newport, yet 27.3% of arrests and citations in recent years.⁵



Equity

Given the racist history of the drug war and its ongoing effects, a number of states have paired equity with legalization. Doni Crawford of the DC Fiscal Policy Institute puts it well in a recent policy paper on legalization: **“This requires undoing the harm of prior cannabis arrests and convictions through expungement, creating racially diverse cannabis business and job opportunities, and intentionally using cannabis tax revenue to build community wealth.”**⁶ Legislators possess a number of options for addressing equity in any legalization plan:

Inclusion and participation at all levels of those harmed by the war on drugs. Budget Article 11 does not call for the inclusion, in the Office of Cannabis Regulation within the Department of Business Regulation, of any individuals harmed by the war on drugs, and although it does not exclude from its proposed Governor’s Cannabis Reinvestment Task Force any such individuals from advisory bodies, neither does it affirmatively include them. Including individuals injured through cannabis criminalization, disproportionately Black Rhode Islanders, would allow them a voice in how cannabis is regulated, how licenses are awarded, and how revenues are spent.

Inclusion applies to licensing and employment as well. Article 11 calls for 20% of licenses to be awarded to minority business enterprises, though even this does not necessarily include individuals who have suffered harm from the war on drugs.

Funding impacted communities to advance equity. Although Article 11 references equity, it is not clear that any funds must go to this end. The Reinvestment Task Force can make recommendations, but it is not clear that these recommendations must be accepted and implemented. Without equity guarantees, the revenue collected might very well fall short of aiding individuals and communities directly and seriously affected by the harms of cannabis criminalization. In part to help build wealth for individuals and in communities with little prior access to such wealth, legislators might include in any legalization framework more clear rules about where revenues go and who makes allocation decisions.

Automatic expungement of criminal records. Although, compared with a decade ago, many fewer Rhode Islanders face jail time for cannabis possession, many still retain a criminal record—whether a conviction or only an arrest—and any such record can prove an obstacle to gaining employment, finding housing, or securing a loan to start a business: “A marijuana arrest or conviction can have lasting negative impacts. In addition to the financial costs associated with fines and legal fees and the loss of wages while in jail, people arrested for drug possession can lose their jobs, lose access to financial aid to support their education, be evicted from their homes, or lose custody of their children, in some cases without ever being convicted of a crime.”⁷ In the eyes of many people, it seems only fair that any past “crimes” no longer considered criminal be erased or sealed, better enabling those hurt by the war on drugs to benefit from participating in the new, legal market. An automated expungement process at no cost to those affected would be the most fair and efficient way to approach this.



Approaches to Taxation

How a state taxes cannabis is not explicitly an equity issue yet remains important if there is a goal to provide sustainable funding for equity initiatives. Although different methods of taxation can be calibrated to raise the same, desired amount of revenue, there are significant differences in the stability and perceived fairness of available methods.

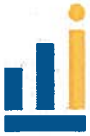
Revenue can be raised through application and licensing fees, and of course there are income taxes paid by businesses and business owners and employees of cannabis industry businesses, but these are the three basic options for raising revenue through taxing sales of cannabis itself:

Taxation by Sales Price. The most common approach to date—and the method used by Budget Article 11—has been to tax the price paid by consumers. Even when it called an excise tax such a tax is basically a sales tax on top of the regular sales tax. The benefit of such a tax is its simplicity, and most states with legalized recreational use employ this approach.⁸ A potential weakness of this approach is that prices are likely to drop over time, while consumption will likely level off. This makes taxing price more volatile and less secure in the long run.⁹

Taxation by Weight. Although taxing sales by price is simple and seems sensible, a tax on cannabis might better be thought of as a true *excise* tax instead of as a sales tax. Rhode Island, like other states, levies excise taxes on such products as gasoline and cigarettes. Gasoline is taxed by the gallon and cigarettes by the pack, regardless of the sales price per gallon or pack. A gallon is a gallon regardless of the formulation of the gasoline, and a pack of cigarettes contains 20 cigarettes regardless of the brand. Following this pattern, it makes sense to tax cannabis by weight instead of by sales price. And, indeed, a number of states take this approach, partially or in full (Alaska, California, Maine). This approach is more complicated than the pricing method because it requires different tax rates for different sorts of cannabis products—plants, plant trim, oil, edibles—but the revenue stream is more stable, because the tax per weight remains the same despite fluctuations in price. Budget Article 11 actually does propose taxing cultivation of cannabis plants by weight, though not sales to the public.

Taxation by Potency. Another approach, being implemented, in part, in New York, is to tax potency.¹⁰ By taxing the milligrams of THC, the active ingredient in cannabis, it would be possible to create a single tax rate across product types, regardless of product weight or sales price. People might see a certain fairness in taxing the active ingredient consistently. The main challenge for this approach is the laboratory analysis required to determine reliably the THC levels across a large variety of products and producers. This approach would share the revenue stability of taxation by weight and be simpler to communicate so long as the laboratory analysis is feasible and reliable.

Without taking a position on legalization itself, the Economic Progress Institute urges policymakers to include strong equity provisions in any successful legislation to allow for the sale of adult recreational use cannabis. **If we fail to strengthen racial and ethnic equity provisions, we will likely continue decades of damaging policies and practices instead of responding to and reversing them.**



¹ For this reason, this policy report uses the term *cannabis* throughout.

² For some of Anslinger's astoundingly racist characterizations, see Natalie Papillion, "Reefer Madness: The Racist Origins of Marijuana Prohibition," June 1, 2020, <https://medium.com/equityorg/reefer-madness-the-racist-roots-of-marijuana-prohibition-37b9e7fb7d6c>. See also Doni Crawford, "First in Line: Why The District Must Take a Reparative Approach to Recreational Cannabis Policy for Black and Brown Communities," DC Fiscal Policy Institute, February 16, 2021, pp. 3-4, <https://www.dcfpi.org/all/first-in-line/>. See also, Chapter 2 of John Hudak, *Marijuana: A Short History*, 2nd Edition (Brookings Institution Press: Washington, DC, 2020).

³ American Civil Liberties Union, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," ACLU Research Report, p. 88, <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>. See, also from the ACLU, "The War on Marijuana in Black and White," June 2013, https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf. Federal data on arrests has long excluded ethnicity as a category, suggesting that the actual ratio of Non-Latinx Whites to Blacks would be higher.

⁴ John Gramlich, "Four-in-ten U.S. drug arrests in 2018 were for marijuana offenses – mostly possession," Pew Research Center, January 22, 2020, <https://www.pewresearch.org/fact-tank/2020/01/22/four-in-ten-u-s-drug-arrests-in-2018-were-for-marijuana-offenses-mostly-possession/>. See also Dylan Matthews, "The black/white marijuana arrest gap, in nine charts," *The Washington Post*, June 4, 2013, <https://www.washingtonpost.com/news/wonk/wp/2013/06/04/the-blackwhite-marijuana-arrest-gap-in-nine-charts/>.

⁵ "Pot and the Police in Rhode Island: An investigation the Media and Law class at URI," December 19, 2017, <https://www.regulaterhodeisland.org/decrim-report/>.

⁶ See Doni Crawford, "First in Line: Why The District Must Take a Reparative Approach to Recreational Cannabis Policy for Black and Brown Communities," DC Fiscal Policy Institute, February 16, 2021, <https://www.dcfpi.org/all/first-in-line/>.

⁷ See <http://www.collaborativeri.org/research/legalization-of-marijuana-in-rhode-island>, which cites Shaila Dewan, "When Bail is Out of Defendant's Reach, Other Costs Mount," *The New York Times*, June 10, 2015.

⁸ In 2017, HB5555 and SB420 would have charged 23%, and in 2018, SB2895 would have charged 10% on top of the sales tax.

⁹ Carl Davis, Misha E. Hill, Richard Phillips "Taxing Cannabis," January 2019, <https://itep.sfo2.digitaloceanspaces.com/012319-TaxingCannabis ITEP DavisHillPhillips.pdf>.

¹⁰ Illinois taxes by price by level of potency, so uses potency but indirectly.